UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

ABF FREIGHT SYSTEM, INC. Employer and PATRICIA LOWNDES Petitioner	Case 4–RD–1972
and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO, LOCAL 500 Union Involved	

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, ABF Freight System, Inc., is engaged in the interstate transportation of freight from approximately 300 facilities across the United States. The Petitioner, Patricia Lowndes, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to decertify the Union Involved, International Brotherhood of Teamsters, AFL-CIO, Local 500 (Teamsters Local 500) as the representative of clerical employees who work at the Employer's Southampton, New Jersey terminal. The Union Involved contends that the only appropriate unit for a decertification election would also include employees from the Employer's Philadelphia, Pennsylvania terminal. The Employer asserts that the single facility unit sought by the Petitioner is appropriate. A hearing officer of the Board held a hearing, and the parties filed briefs with me.

I have considered the evidence and the arguments presented by the parties. As discussed below, I have concluded that the petitioned-for unit is inappropriate because there is a history of collective bargaining between the Employer, as part of a multiemployer association, and Teamsters

Local 500, in a unit that encompasses both the Southampton and Philadelphia terminals. Accordingly, I shall direct an election in the larger unit.

To provide a context for my discussion concerning the appropriateness of the petitioned-for unit, I will first provide an overview of the Employer's operations and the bargaining history at the two facilities. Then I will review the relevant law concerning the appropriate unit in decertification elections involving multilocation units and multiemployer associations. Finally, I will present in detail the facts and reasoning that support my conclusion.

I. OVERVIEW

A. The Philadelphia and Southampton Terminals

The Employer's Philadelphia terminal, which has been in operation for at least 30 years, receives freight from the Employer's distribution centers and transports it to customers along various routes in the Philadelphia area. In 1988, the Employer created a new "satellite" terminal in Cinniminson, New Jersey, which subsequently moved to Cherry Hill, New Jersey in 1990 and then to Southampton in 1995. The Southampton terminal is about 30 miles from the Philadelphia terminal, and the Philadelphia terminal makes shipments to the Southampton facility once or twice a day. When the Cinniminson facility was first opened, two clerical employees from the Philadelphia terminal transferred there.[1] Currently, there are four clerical employees at the Philadelphia terminal and four clerical employees at the Southampton terminal.[2]

B. Bargaining History

The Employer has historically been a member of a multiemployer bargaining association called the Transport Employers Association (TEA). The TEA has had a bargaining relationship with Teamsters locals[3] since at least the 1970s and currently is party to a collective-bargaining agreement with Teamsters Local 500 that is effective from January 17, 1999 to January 16, 2004. The TEA was at one time comprised of several employers, and the current collective-bargaining agreement states that the TEA recognizes Teamsters Local 500 as the bargaining agent for the clerical employees of CF

---

[1] The transfer occurred pursuant to a contractual provision indicating that if an employer opened a new terminal, bargaining unit employees would be offered an opportunity to transfer to the new terminal and continue to work under the provisions of the contract.

[2] The collective-bargaining agreement by its terms covers the following classifications of clerical employees: Rate Clerk A, Rate Clerk B, Rate Clerk C, Cashier, O.S. and D. Clerk, Secretary, Sales Secretary, Senior Clerk, Payroll Clerk, Billing Clerk, General Clerk, Interline Clerk, Manifest Clerk, Stenographer, Bookkeeping Machine Operator, Keypunch Operator, Clerk Typist, Telephone Operator, TWX Operator, Tracing Clerk, Accounts Receivable and Payable Clerk, Junior Clerk, File Clerk, and File and Mail Clerk. The petition seeks a unit of Senior Clerks, but the record does not indicate which clerical classifications are employed at the two facilities. "Clerical employees," as used in this Decision, includes all classifications listed in the collective-bargaining agreement.

[3] Initially, the TEA's agreement was with Teamsters Local 161, but since 1991, Teamsters Local 500 has represented the unit employees. The circumstances of this change were not explained in the record.

Motor Freight, Preston Trucking Company, and the Employer.[4] However, CF Motor Freight and Preston Trucking Company are no longer in business, and the Employer is the only company currently in the TEA. Bob Shaefer, the head of the TEA, has represented the TEA during collective-bargaining negotiations, and Teamsters Local 500 deals with him concerning all contractual issues.

By its terms, the collective-bargaining agreement covers the Employer's facilities in four locations, Philadelphia, Aston, and Norristown, Pennsylvania, and Cherry Hill, New Jersey.[5] In practice, however, only the clerical employees at the Philadelphia and Southampton terminals are represented and covered by the contract. When the clerical employees from the Philadelphia terminal transferred to the newly-opened Cinnaminson terminal in 1988, the Employer, as required by the contract, recognized Teamsters Local 500 as the representative of the clerical employees at the Cinnaminson terminal. No Philadelphia employees transferred to the Norristown and Aston terminals, and the clerical employees at those facilities have never been represented by Teamsters Local 500, although the contract suggests otherwise.

II. THE APPLICABLE LAW

It is well established that a decertification petition must be coextensive with the recognized or certified bargaining unit. *Arrow Uniform Rental*, 300 NLRB 246 (1990); *Mo's West*, 283 NLRB 130 (1989); *W.T. Grant Co.*, 179 NLRB 670 (1969); *Campbell Soup Co*., 111 NLRB 234 (1955). Additionally, the Board will not disturb an historical multilocation unit absent compelling circumstances. *Met Electrical Testing Co*., 331 NLRB 872 (2000); *Trident Seafoods*, 318 NLRB 738 (1995), enfd. in relevant part, 101 F. 3rd 111 (D.C. Cir. 1996). The party challenging the historical unit bears a heavy burden in demonstrating that the unit is no longer appropriate. *Met Electrical Testing Co*., supra.

In *Arrow Uniform Rental*, supra, at 247, the Board stated that, as a general rule, a decertification petition for a single-facility location will be dismissed if that location's bargaining history has occurred within a multilocation unit for more than a year. The Board further stated, however, that a petition covering a single employer's employees will not be dismissed on the ground that it is not coextensive with a multiemployer unit if the petition was filed after the employer timely withdrew from a multiemployer association.

In *Albertson's, Inc.*, 270 NLRB 132, 133 (1984) *(Albertson's I)* and *Albertson's Inc.*, 273 NLRB 286 (1984) *(Albertson's II),*[6] the Board found that a decertification election should be held in a petitioned-for single store unit following the employer's withdrawal from a multiemployer association. The Board departed from the recognized multilocation unit in that case because it found that the unit

[4] Earlier collective-bargaining agreements included additional employers.

[5] The contract apparently was never updated to reflect the relocation of the facility from Cherry Hill to Southampton.

[6] *Albertson's II* was a Supplemental Decision and Order denying the union's "Motion For Reconsideration and to Reopen the Record" in *Albertson's I.*

was in "a state of transition" after the Employer withdrew from the association and informed the union that it intended to negotiate individual contracts for each store.[7]

III. FACTS

The Employer's clerical employees are responsible for billing and collecting money for services, making appointments for deliveries, and dealing with shortages and damages.

There is very little contact between clerical employees at the two terminals. Clerical employees at the Philadelphia facility interact with clerical employees at the Southampton facility only when there is a problem with a shipment, such as a merchandise shortage or a payment issue. This type of employee interaction occurs only about once a month and is limited to telephone conversations. There is never any exchange of work between the clerical employees at the two locations, they do not substitute for each other, and the Employer does not conduct any joint meetings for them.

The clerical employees at the two facilities are separately supervised. The Branch Managers at each terminal are fully responsible for hiring, training, scheduling, and approving leave requests for the clerical employees at their terminals. The Philadelphia Branch Manager has no responsibility for management decisions at the Southampton terminal, and the Southampton Branch Manager has no responsibility for these decisions at the Philadelphia terminal. The Philadelphia Branch Manager and the Southampton Branch Manager both report to the Regional Vice President for Operations, who visits each terminal two to four times a year.

The Philadelphia Branch Manager was not involved in the negotiations for the current collective-bargaining agreement or any previous agreement. He has not processed grievances at the Philadelphia terminal, as none have been filed. He has little interaction with the shop steward for Teamsters Local 500, although he has spoken to her at times about problems, and he has met with an official of Teamsters Local 500 on one occasion. The Philadelphia Branch Manager has never had any direct contact with a representative of the TEA. If he has a labor relations question, he consults with a corporate official in North Carolina.

The clerical employees at both terminals have participated jointly in matters relating to the contract. Thus, in February 1999 employees at both the Southampton and Philadelphia locations voted in the ratification election for the current collective-bargaining agreement. Additionally, pursuant to the contract, employees vote each year whether to divert any of their hourly wage increases into a union severance fund, and employees at both the Philadelphia and Southampton facility have voted on this issue jointly. Recently, Teamsters Local 500 negotiated with the TEA to maintain employee health and welfare benefits for part-time employees at both facilities. The contract provides that if an employee

[7] In that case there was a history of bargaining in a multiemployer unit covering eight stores. When the Employer withdrew from the multiemployer unit, the considerations that supported the eight store unit ceased to exist and the Board found a single-store unit appropriate. The Board also emphasized that the multistore group under the multiemployer agreement would not have been an appropriate multifacility unit for purposes of collective bargaining in an initial unit determination. See *Arrow Uniform Rental*, supra at 247.

transfers to a new terminal and the new terminal closes and the work performed there is transferred back to the original terminal, the employee has the right to return to the original terminal and be dovetailed into the seniority list.

IV. CONTENTIONS OF THE PARTIES

Teamsters Local 500 contends that the TEA has long represented the Employer as part of a multiemployer association and the unit historically has included both the Philadelphia and Southampton terminals. Teamsters Local 500 asserts that when the New Jersey terminal started operating, it used clerical employees from the Philadelphia terminal and constituted an accretion to the Philadelphia terminal bargaining unit. According to Teamsters Local 500, the parties have always administered the contract by treating employees at both terminals as a single unit, and therefore these two facilities cannot be separated for the purpose of a decertification petition.

The Employer and the Petitioner contend that the fact that only one employer remains in the unit is a compelling circumstance which warrants abandoning the historical unit and requires the Board to examine traditional community-of-interest criteria and find the petitioned-for single location unit to be appropriate. The Employer and the Petitioner contend that the circumstances are akin to a withdrawal from the multiemployer unit and therefore the case is governed by *Albertson's, Inc.,* supra.

V. ANALYSIS

I find that the Petitioner and the Employer have not met the heavy burden of demonstrating that an election should be conducted in a single location unit. The employees at the Philadelphia and New Jersey locations have been covered by the TEA contract on a multi-location basis since the New Jersey location came into existence. The parties have long maintained a stable bargaining relationship in this unit, and, even after the other employers ceased operating, the TEA has continued to deal with Teamsters Local 500 in administering the collective-bargaining agreement. Contrary to the Petitioner and the Employer, the narrow exception described in *Albertson's* does not apply to situations other than when employers voluntarily withdraw from a multiemployer association.[8] Unlike in *Albertson's*, the unit herein is not "in a state of transition" because the circumstances relating to the employees of the Employer have not altered; indeed, the change in the composition of the TEA has had no perceptible effect upon the unit. As the petition seeks a unit that is not coextensive with the recognized or certified unit and is contrary to the parties' bargaining history, the unit sought by the petition is not appropriate. *Central Transport,* 328 NLRB 407 (1999); *Arrow Uniform Rental*, supra.

The Petitioner stated at the hearing that it is willing to proceed to an election in a unit that includes both the Southampton and Philadelphia facilities if the petitioned-for single location unit was found to be inappropriate by the Regional Director. An administrative investigation has determined that the Petitioner's showing of interest is adequate for an election in the larger unit. Accordingly, I shall direct an election in a unit that includes clerical employees at both facilities.

---

[8] Thus, in *Albertson's I,* supra at 133, the Board emphasized that a multilocation bargaining history will override traditional unit determination criteria unless one or both of the parties have expressed an intent to bargain on a single facility basis. In this case, unlike *Albertson's*, the employer never informed the Union Involved that it intended to negotiate separately for each store. See *Albertson's I,* footnote 4, where the Board distinguished cases in which the employers had never ceased to bargain on a multiplant basis. *Anheuser–Busch, Inc.,* 246 NLRB 29 (1979); *White-Westinghouse Corp*. 229 NLRB 667 (1977), enfd. 604 F. 2d 689 (D.C. Cir. 1979).

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Union Involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time clerical employees employed at the Employer's terminals located in Philadelphia, Pennsylvania, and Southampton, New Jersey, excluding all other employees, confidential secretaries, guards and supervisors as defined in the Act.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by **International Brotherhood of Teamsters, AFL-CIO, Local 500**. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Eligible Voters

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military

services of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman–Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the ***full*** names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **May 30, 2003**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (215) 597-7658. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST on **June 6, 2003.**

Signed: May 23, 2003

at Philadelphia, PA /s/

DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

420-0100	440-1760-3600
420-2906	440-1760-9133-4300
420-2930	440-1760-9167-4833
420-2933	
420-2936	
420-2966	
420-5034	

H:\R04COM\Decision Writing\DECERT\ABF.doc